Court File No. CV-15-10926-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES LIMITED and SCHEFFERVILLE MINES INC. (the "Applicants")

FACTUM OF THE APPLICANTS
(Plan Sanction Order)
Returnable December 14, 2016

December 13, 2016

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PART I – NATURE OF THE MOTION

1. Labrador Iron Mines Holdings Limited, Labrador Iron Mines Limited, and Schefferville Mines Inc. (together, the "**Applicants**") move for this Court's sanction of their Plan of Compromise and Arrangement dated December 6, 2016 (the "Plan").

2. The Plan achieves a global resolution of these CCAA proceedings and is the product of lengthy negotiations and extensive consultation among key stakeholders. It has the support of the Monitor, and if sanctioned by this Court and implemented, will deal with creditors in a timely manner, without costly and lengthy litigation.

3. In accordance with the terms of the Plan and the Meeting Order, Affected Creditors of the Applicants voted in two classes at the Creditors' Meetings held on December 6, 2016, and an overwhelming majority that were present in person or by

proxy approved the Plan. The creditors of LIMH have unanimously supported the Plan. All but one of the creditors of LIM and SMI support the Plan. The sole opposing creditor, Naskapi Nation of Kawawachikamach (the "Naskapi"), holds only 0.02% of the claims. A portion of the Naskapi's claim is disputed by the Applicants, but even if the is accepted at full value, it would not affect the outcome of the vote on the Plan.

4. This approval level far exceeds the "double majority" of creditor votes required for this Court's approval. The extent of the Affected Creditors' support is also a very strong indicator that the Plan is fair and reasonable and that the Affected Creditors, in their business judgment, believe that it fairly addresses their interests.

5. The Applicants submit that the Plan meets the test for sanction by this Court. The Applicants have complied with the CCAA, nothing has been done that is not authorized under the CCAA, and the Plan represents a fair and reasonable balancing of stakeholder interests.

6. Based on these considerations, and the submissions below, as well as the Monitor's recommendation, the Applicants submit that the Plan should be sanctioned by this Court as fair and reasonable.

PART II – FACTS

A. Summary of the Plan

7. The Plan effects a comprmise of Affected Unsecured Claims. Claims other than Affected Unsecured Claims are not compromised.[1]

8. The primary features of the Plan are as follows.

(a) The Plan features in two classes of creditors: Affected Unsecured Creditors of LIMH and Affected Unsecured Creditors of LIM/SMI.

(b) Affected Unsecured Creditors with Proven Claims that are less than or equal to $5,000 **("Convenience Class Creditors")** will be paid the full amount of their Proven Claims. Affected Creditors with Proven Claims in excess of $5,000 had the option to elect to be treated for all purposes as Convenience Class Creditors.

(c) Affected Unsecured Creditors of LIMH will release and discharge LIMH in exchange for a Pro Rata Share of approximately 25% of the post-Plan

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[1] As per section 3.1 of the Plan, unless otherwise directed by the Court or agreed in writing between the Applicants and the Affected Secured Creditor, with the consent of the Monitor, Affected Secured Creditors with Affected Secured Claims shall:

(a) within 30 days of the date of the Sanction Order, or such later date as the Applicants and the Monitor may agree, take possession of some or all of the collateral for their Claim, at a value that is either (i) agreed between the Affected Secured Creditor and the Applicants, and approved by the Monitor, or (ii) determined by the Court; and,

(b) participate as Affected Unsecured Creditors for the balance of their Claims.

For the avoidance of doubt, unless otherwise directed by the Court, where an Affected Secured Creditor fails to take possession of collateral for their Affected Secured Claim within the time contemplated above, they shall be deemed to have released their security interest in the collateral and shall participate as Affected Unsecured Creditors for the balance of their Claim.

Implementation issued shares of LIMH, with no creditor receiving more than 19.9% of the shares.[2]

(d) Affected Unsecured Creditors of LIM and SMI other than LIMH will release and discharge LIM and SMI in exchange for their Pro Rata Share of the following:

(i) common shares of Amalgamated LIM representing approximately 49% of LIM's issued, post-Plan Implementation shares; and

(ii) 100% of the shares of RoyaltyCo;[3]

(e) LIMH will release and discharge LIM and SMI in exchange for to approximately 51% of Amalgamated LIM's issued, post-Plan Implementation shares.[4]

(f) The Plan does not affect holders of the following Unaffected Claims:

(i) Claims secured by the Administration Charge or the Directors' Charge;

(ii) Claims in respect of the Applicants' site reclamation obligations to Newfoundland and Labrador;

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[2] Eighth Report of the Monitor at para 5.2-2(d).
[3] Eighth Report of the Monitor at para 5.2-2(a).
[4] Absent LIMH's agreement in this regard, LIMH would otherwise be entitled to recover significantly more than 51% of the Plan consideration. LIMH has also elected not to receive any shares of RoyaltyCo. The effect of these agreements is to materially increase recoveries for arm's-length creditors.

(iii) Claims of The Toronto-Dominion Bank ("**TD**") in connection with letters of credit deposited with the environmental authorities of Newfoundland and Labrador as security for the Applicants' site reclamation obligations thereto, to the extent that TD holds cash collateral in respect of such letters of credit;

(iv) Claims of QNS&L in connection with Confidential Transportation Contract No. 001 between QNS&L and LIM executed on March 8, 2011, as amended; and

(v) Claims of TSH, other than TSH's Pre-Filing Claims, in connection with an agreement entitled "The Transportation by Rail of DSO Project Iron Ore on TSH Railway", as amended.[5]

(vi) Claims as set out in Schedule "E" of the Plan, including, among other things, post-filing claims for goods and services provided to the Applicants subsequent to the Initial Order, certain claims and post-filing claims of Her Majesty the Queen in Right of Canada or of any province or territory (e.g. for any source deductions), and Claims of senior management for post-filing deferred salary.[6]

9. If this Court sanctions the Plan, the Plan Implementation Date will be the date on which all conditions precedent are satisfied, or if permitted, waived. The Applicants are currently working towards December 19, 2016 as the Plan Implementation Date.

[5] Eighth Report of the Monitor at para 5.7-1; Plan of Compromise and Arrangement, s 1.1, definition of "Excluded Claims".
[6] Eighth Report of the Monitor at para 5.7-2.

B. Notice of the Creditors' Meetings

10. On November 10, 2016, this Court granted an order permitting the Applicants to put the Plan before the Affected Unsecured Creditors for approval at two Creditors' Meetings (the "**Meeting Order**").

11. The Meeting Order permitted the classification of Affected Unsecured Creditors into two classes ((i) Affected Unsecured Creditors of LIMH, and (ii) Affected Unsecured Creditors of LIM and SMI), provided for notice requirements to Creditors, and set the date of Creditors' Meetings.

12. The Applicants complied with all of the terms of the Meeting Order.

13. On November 14 and 15, 2016, the Monitor published the Meeting Materials on the Monitor's website, including a copy of the Plan.[7] The Meeting Materials were sent to Affected Creditors by first class mail on November 14 and 15, 2016.[8] In addition, notices of the Creditors' Meeting were published in major national newspapers on November 16, 2016.[9]

C. The Meetings of Creditors

14. In accordance with the Meeting Order, the Creditors' Meetings were held on December 6, 2016. The required quorum was present and the meeting was properly constituted.[10]

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[7] Ninth Report of the Monitor at para 3.0-2.
[8] Ninth Report of the Monitor at para 3.0-1.
[9] Ninth Report of the Monitor at para 3.0-3.
[10] Ninth Report of the Monitor at para 4.0-3.

15. At the meeting of Affected Unsecured Creditors of LIMH, 100% in number representing 100% in value of the Affected Creditors holding Proven Claims against LIMH that were present in person or by proxy and voting at the Creditors' Meeting voted (or were deemed to vote) to approve the Resolution in favour of the Plan. According to the Monitor's tabulation, eight Affected Creditors representing approximately $43 million in value voted (or were deemed to vote pursuant to the Meeting Order) at the Creditors' Meeting.[11]

16. At the meeting of Affected Unsecured Creditors of LIM/SMI, approximately 99% in number representing 99.98% in value of the Affected Creditors holding Proven Claims against LIM/SMI that were present in person or by proxy and voting at the Creditors' Meeting voted (or were deemed to vote) to approve the Resolution in favour of the Plan. According to the Monitor's tabulation, 68 Affected Creditors representing approximately $67 million in value voted (or were deemed to vote pursuant to the Meeting Order) at the Creditors' Meeting.[12]

17. The only creditor that voted against the Plan was the Naskapi, in respect of an allowed claim of approximately $13,000, and a disputed claim of approximately $3 million.

D. Disputed Naskapi Claim

18. The Naskapi submitted a Proof of Claim for $2,989,400 on May 31, 2016. It alleges that LIM breached the terms of an Economic Development Agreement with the

[11] Ninth Report of the Monitor at para 4.1-2.
[12] Ninth Report of the Monitor at para 4.1-3.

Naskapi, such that the Naskapi has a secured claim over LIM's mining claims and leases in Newfoundland and Labrador.[13]

19. LIM disputed this claim as to both quantum and security, and delivered a Notice of Revision or Disallowance on August 23, 2016.[14]

20. The Naskapi delivered a Notice of Dispute of Revision or Disallowance on October 12, 2016.[15]

21. The dispute has yet to be resolved.

PART III - ISSUES AND THE LAW

22. The sole issue on this motion is whether the Court should approve the Plan having regard to the opposition by the Naskapi.

A. Test for Sanctioning a Plan

23. Section 6(1) of the CCAA provides that the Court has discretion to sanction a plan of compromise or arrangement if it has achieved the requisite "double majority" vote. The effect of the Court's approval is to bind the company and its creditors:

> 6(1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

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[13] Brief Of Claims Procedure Documents Re: Naskapi, Tab 1.
[14] Brief Of Claims Procedure Documents Re: Naskapi, Tab 2.
[15] Brief Of Claims Procedure Documents Re: Naskapi, Tab 3.

> on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company....

24. The criteria that a debtor company must satisfy in seeking the Court's approval for a plan of compromise or arrangement under the CCAA are well established:

(a) there must be strict compliance with all statutory requirements;

(b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and

(c) the plan must be fair and reasonable.[16]

B. Compliance with all Statutory Requirements

25. Under this first branch of the test for sanctioning a CCAA plan, the Court typically considers factors such as whether: (a) the applicant comes within the definition of "debtor company" under section 2 of the CCAA; (b) the applicant or affiliated debtor companies have total claims in excess of $5 million; (c) the notice of meeting was sent in accordance with the Court's Order; (d) the creditors were properly classified; (e) the creditors' meeting was properly constituted; (f) the voting was properly carried out; and (g) the plan was approved by the requisite majority.[17]

26. In this case, the Applicants submit that they have satisfied all of these requirements. In particular,

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[16] *Re Canwest Global Communications Corp*, 2010 ONSC 4209 at para 14 [*Canwest Global*], Applicants' Book of Authorities ("**BOA**") **Tab 1**.
[17] *Ibid* at para 15, **BOA Tab 1**.

(a) in granting the Initial Order, this Honourable Court determined that the Applicants qualified as debtor companies under section 2 of the CCAA and that the Applicants were insolvent;[18]

(b) Affected Creditors were classified for the purposes of voting and receiving distributions under the Plan and they voted on the Plan in two classes. This Honourable Court approved the classification of Affected Creditors in granting the Meeting Order. The classification of Affected Creditors was not opposed at that time, nor was the Meeting Order appealed;

(c) in accordance with the Meeting Order, the Monitor provided copies of the Meeting Materials to Affected Creditors, and an electronic copy of the Meeting Materials was posted on the Monitor's website maintained for this CCAA proceeding. In addition, the Monitor published notice of the Creditors' Meeting in The Globe & Mail (National Edition; English), The Telegram (St. John's, NL; English) and Le Journal Nord-Côtier (Sept-Îles, Québec: French).

(d) Affected Creditors were provided with the Applicants' letter to creditors containing an overview of the terms of the Plan;

(e) the Creditors' Meetings were properly constituted and the voting was carried out in accordance with the Meeting Order; and

[18] Initial Order of Morawetz J, dated April 2, 2015.

(f) 100% in number representing 100% in value of the Affected Creditors that were present and voting in person or by proxy at the Creditors' Meeting for LIMH voted in favour of the Plan, and approximately 99% in number representing 99.98% in value of the Affected Creditors that were present and voting in person or by proxy at the Creditors' Meeting for LIM/SMI voted in favour of the Plan — such overwhelming approval of the Plan far exceeds the required statutory "double" majority under section 6(1) of the CCAA.

27. The claims of Affected Creditors are not being paid in full. In compliance with section 6(8) of the CCAA, the Plan does not provide for any recovery for equity holders.[19]

28. The Monitor is of the view that the Plan complies with the requirements of the CCAA, including the requirements under section 6 of the CCAA.

29. Accordingly, the Applicants submit that the statutory prerequisites to the sanction of the Plan have been satisfied.

C. No Unauthorized Steps taken by the Applicants

30. In making a determination as to whether anything has been done — or is purported to have been done — that is not authorized by the CCAA, the Court should rely on the parties and their stakeholders and the reports of the Monitor.[20]

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[19] Section 6(8) of the CCAA provides that "No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid."
[20] *Canwest Global, supra* note 16 at para 17, **BOA Tab 1**.

31. The Applicants submit that no unauthorized steps have been taken in this CCAA proceeding and that this Honourable Court has been kept apprised of all of the key issues facing the Applicants throughout the restructuring. In particular:

(a) The Monitor has issued nine reports in this proceeding, as well as its Pre-Filing Report; and

(b) This Court has issued numerous Orders throughout this proceeding.

32. The Plan treats creditors with Proven Claims enumerated in sections 5.1(2) and 19(2) of the CCAA as "Unaffected Creditors."

33. The Applicants have acted in good faith and with due diligence in complying with all Court Orders and ensuring that no unauthorized steps have been taken under the CCAA. This Court therefore has the jurisdiction to approve the Plan.

D. The Plan is Fair and Reasonable

34. The Applicants further submit that this Court should exercise its discretion to sanction the Plan as fair and reasonable.

35. When considering whether a plan is fair and reasonable, the court will consider the relative degrees of prejudice that would flow from granting or refusing to grant relief sought under the CCAA and whether the plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available.[21]

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[21] *Canwest Global, supra* note 16 at para 19, **BOA Tab 1**; *Re AbitibiBowater Inc,* 2010 QCCS 4450 at paras 29-43, **BOA Tab 2.**

36. Generally speaking, a plan will be approved where it provides "equitable" treatment to creditors, viewed as a whole, and where it balances interests in a manner that represents an equitable sharing of the pain of the insolvency. Where creditors have signalled their support of a plan by means of the vote, the court will be very reluctant to second-guess the business decisions made by the stakeholders as a body.[22]

37. In assessing whether a proposed plan is fair and reasonable, the Court will consider the following:

(a) whether the claims were properly classified and whether the requisite majority of creditors approved the plan;

(b) what creditors would receive on bankruptcy or liquidation as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders; and

(f) the public interest.[23]

38. Each of these factors strongly supports approval of the Plan by this Court:

(a) Classification and Creditor Approval: As noted above, Affected Unsecured Creditors voted as two classes, as directed by the Meeting Order, on the

[22] *Re Sammi Atlas Inc.*, 1998 CarswellOnt 1145 at para 4-5, (Ont. Gen. Div.) [Sammi Atlas], **BOA Tab 3**.
[23] *Canwest Global, supra* note 16, at para 21, **BOA Tab 1**.

basis of commonality of interest vis-à-vis the debtor company. The LIMH class all held unsecured Claims against LIMH. The LIM/SMI class voted together as a class, having regard to the insignificance of the SMI Only Claims, the commonality of consideration to be received under the Plan, and their common prospects in the event of a failed restructuring. The Plan received unanimous approval from Affected Creditors voting at the LIMH Creditors' Meeting, majority approval at the LIM/SMI Creditors' Meeting (all but 1 creditor). Creditor support creates an inference that the plan is fair and reasonable because the assenting creditors believe that their interests are treated equitably under the plan.[24] The unanimous approval of the Plan reflects the fact that it is a product of dialogue, negotiation and communication among stakeholders and therefore a true compromise.

(b) Recovery on Bankruptcy: The Monitor has expressed the view that recoveries under the Plan are well in excess of those that would have been received on a liquidation basis from the Applicants' mineral properties, or the potential commencement of reclamation processes by the relevant environmental regulatory authorities. There is no certainty that a bankruptcy or other form of liquidation proceeding would necessarily follow as a Trustee in Bankruptcy or other Court officer may not be prepared to assume the environmental and other risks associated with taking possession of the Applicants' assets.

[24] *Sammi Atlas, supra* note 22, at para 5, **BOA Tab 3**.

(c) Alternatives to the Plan: When this CCAA proceeding was commenced, there was no prospect for the future business of the Applicants. The Plan is the only alternative to a bankruptcy, and represents the best alternative for creditors in light of all relevant circumstances.

(d) No Oppression of Creditors: There is no oppression of any creditor rights. Although case law makes it clear that a plan can be fair and reasonable even if it does not provide exactly the same recoveries for all creditors, the Plan treats creditors in each class evenly.

(e) No Unfairness to Shareholders: Given that Affected Creditors are not being paid in full, there is no unfairness to shareholders in receiving no recoveries under the Plan.

(f) Public Interest: The Plan preserves the opportunity for economic benefit in a distressed market and in the face of global competition, and thereby speaks directly to the social stakeholder objectives of the CCAA.

E. The Releases are Fair and Reasonable

39. The Plan contemplates that, on the Plan Implementation Date, each Creditor will be deemed to forever release the Applicants, the Monitor and each of their present and former shareholders, officers, directors, employees, auditors, financial advisors, legal counsel and agents from any claims, obligations and the like that arose prior to the Plan Implementation Date.[25]

[25] Eighth Report of the Monitor at para 5.4-1; Plan of Compromise and Arrangement, ss 7.5, 7.9.

40. The Releases are appropriate and rationally connected to the overall purpose of the Plan, which is to provide the Applicants and their stakeholders with an opportunity for a fresh start in the event that iron ore markets recover sufficiently, to make the Applicants mining projects viable again.

41. The Releases apply to the extent permitted by law and expressly do not apply to liability for criminal, fraudulent or other wilful misconduct, or to other claims that are not permitted to be compromised or released under the CCAA, particularly claims under section 5.1(2) of the CCAA.

42. Full disclosure of the Releases was made to Affected Creditors in the Meeting Order Affidavit, in the Plan and in the Letter to Creditors. No party has objected to the scope of the Releases contained in the Plan.[26]

43. The Monitor is of the view that the Plan as a whole is fair and reasonable. Accordingly, the Applicants submit that this Court should sanction the clear decision of the Affected Creditors that the Plan represents an equitable balancing of their interests and approve the Plan.

F. Impact of the Disputed Naskapi Claim

44. The Disputed Naskapi Claim is irrelevant to the sanction and implementation of the Plan.

45. As noted above, the Plan compromises only the claims of Affected Unsecured Creditors.

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[26] See *Re Cline Mining Corp,* 2015 ONSC 622 at para 25, **BOA Tab 4**.

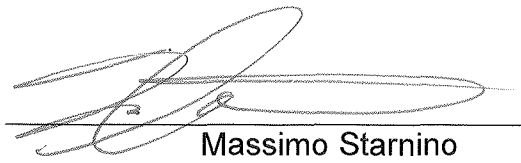
46. To the extent that the Disputed Naskapi Claim is determined to be a secured claim (or, for that matter, anything other than an Affected Unsecured Claim), then it is not compromised by the Plan, and the Applicants and the Monitor have agreed to extend the time for enforcement of any security to within 30 days following the determination of the Claim.

47. Alternatively, if the Disputed Naskapi Claim is an Affected Unsecured Claim, then, even if accepted at its full value, it does not materially change the outcome of the vote on the Plan.

PART IV - NATURE OF THE ORDER SOUGHT

48. For all of the reasons above, the Applicants submit that this Honourable Court should grant the Sanction Order requested by the Applicants, along with any corollary relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Re Canwest Global Communications Corp.*, 2010 ONSC 4209
2. *Re AbitibiBowater Inc.*, 2010 QCCS 4450
3. *Re Sammi Atlas Inc.* (1998), 3 C.B.R. (4th) 171 (Ont. Sup. Ct.)
4. *Re Cline Mining Corp.*, 2015 ONSC 622

SCHEDULE "B"

COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

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Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

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Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as

altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii)wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

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Claims

Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

Court File No. CV-15-10926-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LABRADOR IRON MINES HOLDINGS LIMITED, LABRADOR IRON MINES LIMITED and SCHEFFERVILLE MINES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPLICANTS
(Plan Sanction Order)

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